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United States Department of State

Washington, D.C. 20520

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July 31, 2009

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ACTION MEMO FOR DEPUTY SECRETARY STEINBERG

FROM: EEB – David D. Nelson, Acting

SUBJECT: Enbridge Energy Alberta Clipper Pipeline Permit Record of Decision

Recommendations

That you sign the attached Record of Decision and National Interest Determination (ROD) for the Alberta Clipper Pipeline Project, and authorize transmittal of the notification memorandum to the federal agencies whose views we have solicited.

8/3/09

Approve AUG - 3 2009 Disapprove ____________

That you sign the attached Presidential permit, to be released fifteen days from the date of transmittal of the above-mentioned memorandum, barring any *objections from the interagency.*

Approve ____________ Disapprove ____________

AUG - 3 2009

Background

Executive Order 13337, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential permits upon a national interest determination. The functions assigned to the Secretary have been further delegated within the Department of State to the Deputy Secretary of State, the Under Secretary of State for Political Affairs and the Under Secretary of State for Economic, Energy and Agricultural Affairs. Further, in the February 13, 2009 Department of State Delegation of Authority No. 245-1, Secretary Clinton delegated to the Deputy Secretary of State and to the Deputy Secretary of State for Management and Resources, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order,

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determination, delegation of authority, regulation, or executive order, now or hereafter issued.

On May 15, 2007, Enbridge Energy, Limited Partnership (Enbridge) submitted an application to the Department for a Presidential Permit for the construction, connection, operation, and maintenance of an oil pipeline and associated facilities at the U.S.-Canada border. The proposed pipeline would enable Enbridge to import heavy crude oil from Canada (the Alberta Clipper Project). Enbridge is a limited partnership duly organized under the laws of the State of Delaware, and is a wholly owned subsidiary of Enbridge Energy Partners, L.P. ("Enbridge Partners"), which is a Delaware limited partnership headquartered in Houston, Texas. The U.S. portion of the Alberta Clipper pipeline would consist of approximately 326.9 miles of new 36-inch-diameter pipeline and associated facilities that would be installed primarily within or adjacent to the existing Enbridge pipeline corridor from the U.S.-Canada border to the existing Enbridge terminal in Superior, Wisconsin. The Project also would require new construction at existing pump stations and construction of delivery facilities and mainline valves. To meet anticipated demand, the proposed Alberta Clipper Project would provide approximately 450,000 bpd of heavy crude oil capacity, an amount equivalent to five percent of U.S. daily oil imports. The estimated investment in the overall pipeline approaches two billion dollars.

In accordance with the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321 – 4370f, the Council of Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. Parts 1500-1508, and the Department's regulations for the implementation of NEPA, 22 C.F.R. Part 161, the Department prepared a Final Environmental Impact Statement (FEIS) for the Alberta Clipper Pipeline Project with full public participation, including multiple public meetings held along the pipeline route and ample opportunity for written and oral public comment on the project.

Notice of the availability of the FEIS was published in the Federal Register on June 8, 2009 (74 Fed. Reg. 108). Under NEPA, the Department can prepare and publish in the Federal Register a Record of Decision (ROD) of its "national interest" determination on the Enbridge application no earlier than 30 days from the date of publication of the FEIS. If a favorable determination is made on the ROD and the permit is signed, Executive Order 13337 requires that certain agencies be notified of that decision and given fifteen days to object to the President. Absent objection, the permit will subsequently be issued to Enbridge.

In accordance with Section 106 of the National Historic Preservation Act of 1966 (NHPA), and its implementing regulations, the Department, as the lead federal agency of a federal undertaking (issuance of a Presidential Permit), conducted consultations with the Advisory Council on Historic Preservation, the applicant, and other relevant parties, including Indian tribes, to consider potential impacts to historic properties that would result from construction of the Alberta Clipper Project. In accordance with applicable regulations, we have developed for your signature a Programmatic Agreement (PA) with the applicant, several other federal agencies, state historic preservation officers, and several Indian tribes, which describes how the relevant parties will deal with unanticipated discoveries of historic properties during construction. Among the matters to be addressed under the terms of the PA would be a pending request by the Fond du Lac tribe that large tracts of territory in Minnesota, part of which is crossed by the pipeline, should be evaluated as traditional cultural property. The Department proposes to deal with the Fond du Lac request (and other similar claims by tribes) in accordance with the procedures set forth in the PA.

Further, in accordance with section seven of the Endangered Species Act (ESA), and its implementing regulations, the Department served as the lead agency for purposes of evaluating the anticipated effects of the proposed Alberta Clipper pipeline project on federally listed species or their critical habitat. Enbridge (in coordination with the Department) engaged in correspondence, surveys, and consultations with the U.S. Fish and Wildlife Service (USFWS) and state agencies to identify species and habitats of concern. The Department prepared a draft Biological Assessment (BA) for the project, received and incorporated comments from the USFWS, and has concluded a final BA with the USFWS.

EEB, OES, L, and WHA considered all relevant information, including Enbridge's application; the FEIS, and all comments received in connection with the application and the preparation of the FEIS; the Programmatic Agreement prepared pursuant to section 106 of the NHP;, and the Biological Assessment prepared pursuant to section 7 of the ESA, in determining whether the issuance of a permit would be in the U.S. national interest. Consistent with E.O. 13337, relevant agencies' views were sought on Enbridge's application and the FEIS. None of the federal agencies consulted objected to the issuance of the proposed permit.

Based on the facts and findings contained in the Record of Decision, we recommend that you find that the Alberta Clipper Pipeline Project would serve the national interest.

The addition of this pipeline would provide an efficient, reliable, cost-effective and environmentally sound means of transporting Canadian crude oil to the United States. In this time of significant political uncertainty in key oil-producing countries and regions, and in the context of a difficult economic situation, non-OPEC Canadian crude oil supplies advance the energy security of the United States, given Canada's close proximity, our free trade agreements, and our close bilateral relationship with this stable democracy. Moreover, recent oil market trends suggest that, in a time of generally flat to decreasing U.S. oil demand, the increasing flow of oil from Canada is backing out maritime oil imports from less reliable oil suppliers. In the context of a difficult economic situation, the project is also "shovel ready", and in the short term, will provide construction and pipe-fitting jobs in the United States. The American Petroleum Institute, the AFL-CIO, the Canadian-American Business Council, and the Association of Oil Pipelines have noted the energy security and jobs benefits of the proposed pipeline.

A coalition of environmental groups, among them the Natural Resources Defense Council (NRDC), the Sierra Club, and Friends of the Earth, have urged the Administration to find that approval of this pipeline is not in the national interest. These groups highlight the fact that production of oil sands crude generates more greenhouse gas emissions as compared to conventional extraction methods because of the energy intensity (steam) needed to extract the resource. Sources we have reviewed suggest that oil sands are fifteen to twenty five percent more energy intensive than conventional oil on a life cycle basis (i.e., including the use of the oil).

In 2008, the Department issued a Presidential permit to TransCanada Keystone Pipeline, L.P. for Keystone pipeline to similarly transport oil from Alberta, Canada. The Department's decision was challenged, under NEPA and other statutes, in two lawsuits, one brought in federal court in D.C. by the National Resources Defense Council, et al., and the second brought in federal court in South Dakota by several Indian tribes (including the Sisseton-Wahpeton Oyate and the Rosebud Sioux Tribe). The USG has filed motions to dismiss in both cases; both parties in the D.C. case have also sought summary judgment. Those motions are pending before the courts. We understand that the Sierra Club similarly intends to sue the Department if it issues the Alberta Clipper permit.

As outlined in Section 2.8.1 of the EIS, the proposed project would have a maximum design capacity of 500,000 barrels per day (bpd), with an expected

average annual capacity of 450,000 bpd. At this level, transported petroleum would approach about five percent of U.S. oil imports. Available information suggests that oil sands crude emits roughly two and a half times more carbon dioxide to produce and upgrade than the average barrel of oil consumed in the United States, and between 10-20% more carbon dioxide on a life-cycle basis (i.e., including final consumption of the oil, which accounts for 70-80% of oil's life-cycle carbon dioxide emissions). This information would suggest the proposed project has the potential to result in emissions increase (mostly in Canada) of up to 8-18 million tons of carbon dioxide per year (0.11-0.25% of overall U.S. greenhouse gas emissions) if the project pumped only oil sands crude at a capacity of 450,000 bpd and displaced the average grade of oil consumed in the United States. The pipeline has capacity to carry a further 350,000 bpd if additional pumps are installed, with proportional increases in Canadian greenhouse gas emissions. Expansion of capacity would be subject to review by the Department. The applicant has indicated it does not have any plans to expand the project.

The environmental coalition has placed the decision for this particular permit in the context of the possibility of developing future pipeline capacity at a time of declining oil consumption, which would increase the relative share of oil sands petroleum in our energy mix, with proportionally higher greenhouse gas emissions. As noted above, the Department granted a permit for the Keystone pipeline last year, and has received another permit request from TransCanada for an additional pipeline to augment the Keystone system. Together, the two Keystone pipelines and the Alberta Clipper pipeline – if running at capacity – would have the potential to transport three million barrels a day of oil sands petroleum for export to the U.S. market, although current oil sands production is closer to 1.3 million barrels per day. Industry experts advise that no additional major pipelines to the United States will be needed for five to ten years, if ever.

It is likely that U.S. growth in use of oil from oil sands will to some extent substitute for faltering volumes of Venezuelan and Mexican heavy crude, which also have a relatively high GHG footprint. In addition, if the oil sands do not flow to the United States, industry executives have vowed to build pipelines to the Canadian west coast for export to Asia. Oil sands exports to China grew to over 100,000 b/d this month.

Like the United States, Canada intends to establish an economy-wide cap-and-trade system that would put a price on CO2 emissions, which would make oil sands relatively more expensive than other sources. The Province of Alberta already imposes emissions controls on oil sands producers. Additionally,

beginning with the President's trip to Ottawa in February, this Administration has begun a Clean Energy Dialogue with Canada aimed at enhancing the efficiency and lowering the environmental footprint of overall North American energy production and use.

These issues have been considered by the Department along with other issues in determining whether the pipeline is in the national interest. Relevant USG agencies, including White House agencies, were consulted.

The issues raised by the environmental groups are substantive, however our preferred approach is for the United States and Canada to address these issues in the context of comprehensive domestic measures to reduce their respective emissions. This approach is consistent with general U.S. climate policy, which has focused on countries' aggregate contribution to reducing greenhouse gases rather than on the specific actions they would take to meet those contributions. We expect that, in the context of an international agreement, Canada and the United States will take comparable economy-wide targets that are commensurate with what the science demands. In this context, we do not conclude that the concerns raised outweigh the benefits associated with a secure source of crude from a close ally in a time of economic and oil market uncertainty.

We therefore recommend that you find the pipeline to be in the national interest. The United States will continue to reduce its reliance on oil through conservation and energy efficiency measures, such as recently increased Corporate Average Fuel Economy (CAFE) standards, as well as through the pursuit of comprehensive climate legislation and a global agreement on climate change. We cooperate with the Canadian government through the Clean Energy Dialogue and other processes to promote the deployment of technologies that reduce our respective GHG emissions, and will sustain our diplomacy to encourage Canada to cover oil sands emissions under a cap-and-trade system.

If you sign the Record of Decision and National Interest Determination, and the permit, we will notify the federal agencies whose views we have solicited of that decision. If none of the agencies we are required to notify under E.O. 13337 object to permit issuance within fifteen days after you have signed the ROD, we will issue the signed permit to Enbridge.

If you find that issuance of the permit would not be in the national interest, we will notify the same agencies of your proposed determination that Enbridge's application be denied.

We are available to provide an additional briefing on our recommendation at your earliest convenience.

Attachments:

Tab 1 – Record of Decision and National Interest Determination
Tab 2 – Executive Secretary Memo
Tab 3 – Executive Order 13337
Tab 4 – Enbridge Energy Permit Application
Tab 5 – Final Environmental Impact Statement
Tab 6 – Permit

July 24, 2009

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